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In re Application of HERRMANN et al
U.S. Application No.: 09/830,518
Int. Application No.: PCT/EP00/08126
Int. Filing Date: 21 August 2000
Priority Date: 26 August 1999
Attorney Docket No.: NNG201
For: POLYCYCLIC PYRIMIDINE...

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DECISION

This is in response to the "Petition to Accord the Correspondence Filing Date and to Withdraw Holding of Abandonment Under 37 C.F.R. 1.10(c)" filed 26 March 2002.

BACKGROUND

On 21 August 2000, applicant filed international application PCT/EP00/08126, which claimed priority of an earlier Germany application filed 26 August 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 01 March 2001. The twenty-month period for paying the basic national fee in the United States expired at midnight on 26 April 2001.

On 27 April 2001, applicant filed national stage papers in the United States Designated Elected Office (DO/EO/US). The submission included, *inter alia*, a Transmittal Letter and the basic national fee.

On 14 November 2001, this Office mailed a decision which indicated that the present application is abandoned as to the United States of America for failure to timely file the basic national fee required by 35 U.S.C. 371.

On 26 November 2001, the DO/EO/US mailed a Notice of Abandonment which stated that the present application is abandoned for failure to timely respond to a decision on petition mailed 31 May 2001.

On 28 January 2002, applicant filed a petition to withdraw the holding of abandonment.

On 11 February 2002, applicant filed a petition under 37 CFR 1.10(c). The petition includes a certificate of mailing stating that the petition was deposited as first class mail on 28 November 2001. It is believed that because of certain USPS mail delays experienced in the Fall of 2001, the petition was not received by the USPTO until 11 February 2002.

On 12 February 2002, this Office mailed a decision vacating the 26 November 2001 Notice of Abandonment but indicating that the application remains abandoned for failure to timely file the basic national fee under 35 U.S.C. 371.

On 15 March 2002, applicant filed an executed declaration.

On 26 March 2002, applicant filed the present petition under 37 CFR 1.10(c).

DISCUSSION

37 CFR 1.10(c) states,

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

With regard to item (1) above, the 11 February 2002 petition was promptly filed after the 14 November 2001 decision was mailed.

With regard to item (2) above, a review of the 27 April 2001 Transmittal Letter and the copy of the Express Mail mailing label filed with the present petition indicates that the Express Mail mailing label number was placed on the correspondence in question prior to the original mailing by Express Mail.

With regard to item (3) above, the present petition includes a copy of the Express Mail mailing label showing a "date-in" of 26 April 2001.

Therefore, applicant has satisfied all the requirements of 37 CFR 1.10(c).

CONCLUSION

For the reasons above, the petition under 37 CFR 1.10(c) is GRANTED.

The application has an International Filing Date of 21 August 2000 and a date under 35 U.S.C. 371 of 15 March 2002.

The application is being forwarded to the DO/EO/US for processing in accordance with this decision.



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